

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH, JAIPUR.

J U D G M E N T

Raj Kanwar Bai & Ors. Vs. Mst. Jankanwar Bai

S.B. CIVIL FIRST APPEAL No.171/1987
against the judgment & decree dated
dated 2.11.1987 passed by the
District Judge, Jhalawar in Civil
Suit No.4/1982.

Date of Judgment :: November 20, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. B.L. Mandhana for the defendants appellants.
Mr. Manish Bhandari for the plaintiff respondent.

BY THE COURT:

1. This appeal of defendants has been filed in this court under section 96 of Civil Procedure Code against the judgment and decree dated 2.11.1987 passed by the learned District & Sessions Judge, Jhalawar, in Civil Suit No.4/82 by Mst. Jan Kunwar Bai V/s Raj Kunwar Bai decreeing the plaintiff's suit for declaration and possession of suit house situated in the town of Sunel which belonged to one Mst. Dhan Kunwar Bai, a Devdasi in a government temple of Shri Ram situated in the said town, who adopted the plaintiff Mst. Jan Kunwar Bai by a registered adoption deed dated 28.2.1942 and later on Mst. Dhan Kunwar died in the

year 1953 and thus according to plaintiff Mst. Jan Kunwar Bai, she became the owner in possession of the suit house.

2. The plaintiff further claimed in plaint that defendant Kanhaiya Lal took possession of the suit house from the plaintiff to celebrate marriage of his daughter in June 1981 with a promise to return the same after one month, but after expiry of the period of such one month, he refused to give back the possession of the suit house to the plaintiff and therefore the cause of action for filing the said suit arose to the plaintiff. According to the plaintiff, the said defendant Kanhaiya Lal took undue advantage of his near relationship with the plaintiff, he being the son of sister of Mst. Dhan Kunwar and thus being her cousin.

3. As against this, the case of the defendants in the suit was that the said Mst. Dhan Kunwar Bai had given the said suit property by a registered gift deed (Bakshishnama) way back on 9.12.1938 to the father of the defendants Mst. Raj Kunwar Bai, namely; Shri Bhanwani Shankar and after the death of said Mst. Dhan Kunwar Bai, the defendant Mst. Raj Kunwar Bai became the Devdasi of the said temple and was regularly receiving the grant for that purpose and in fact, the said plaintiff Mst. Jan Kunwar Bai had left the place

and started living with one Shri Bhagwati Prasad Bhatnagar ever since 1943 in the capacity as his mistress and therefore she had no right, title or interest over the suit property and the said property was claimed only by the said Shri Bhagwati Prasad Bhatnagar who only appeared before the trial court as power of attorney holder of the said plaintiff and was interested in grabbing the said property and the plaintiff did not even appear before the trial court and deposed.

4. The learned trial court on the basis of the pleadings of the parties, framed seven issues as under :

1. Whether Mst. Dhan Kunwar Bai adopted plaintiff according to customs on 28.10.1941 and executed a registered adoption deed in favour of plaintiff on 28.2.1942 and thus the plaintiff became owner of the suit property since 1953 ?
2. Whether the defendants had taken possession of the suit property in the year 1981 for the marriage of daughter of Kanhaiya Lal and whether the plaintiff is entitled to re-possession the said house ?
3. Whether the plaintiff is entitled to mesne profit @ Rs.220 p.a. ?
4. Whether Mst. Dhan Kunwar Bai had made a gift of eastern part of the suit house in favour of father of defendants on 9.12.1938 and gave the possession and ever since then the defendants are legally in possession of the said house ?

5. Whether the possession of the defendants has been rendered regular by adverse possession (Mukhalafana) ?
6. Whether Mst. Dhan Kunwar Bai had cancelled the adoption deed in favour of the plaintiff during her life time ?
7. Relief.

5. In support of the plaint, the plaintiff produced PW-1 Bhagwati Prasad Bhatnagar - the power of attorney holder of plaintiff, PW-2 Badri Das, PW-3 Tayyab Ali and PW-4 Shri Ram Prasad and produced the documentary evidence in the form of Ex.1 - general power of attorney in favour of Bhagwati Prasad Bhagnagar, Ex.2 - adoption deed, Ex.3 - agreement, Ex.4 - certificate of Municipality, Sunel, Ex.5 - notice and Ex. 6, 7 and 8 - acknowledgment receipts of the said notices.

6. The defendants produced in evidence DW-1 Moti Lal, DW-2 Bhawani Shankar and DW-3 Dudha and documentary evidence in the form of Ex.A 1 - photo, Ex.A 2 - gift deed, Ex.A 3 - revenue record regarding Khasra Milan map, Ex.A 4 - sight map, Ex.A 5 - copy of Khasra Girdawari, Ex.A 6 - copy of Jama Bandhi and Ex.A 7 - certificate from Devasthan department.

7. The learned trial court decided all issues in favour of the plaintiff and decreed the suit.

8. I have heard learned counsel for the parties and perused the relevant record and pleadings of the parties and heard learned counsels.

9. From the evidence on record, it appears that plaintiff Mst. Jankunwar Bai adopted by Mst. Dhan Kunwar Bai, a Devdasi in the Government Shri Ram temple, whose ownership of the suit house is not in dispute, though adopted plaintiff Mst. Jankunwar Bai in the year 1942 but the said plaintiff Mst. Jankunwar Bai left her in the year 1943 itself and started living with PW 1 - Shri Bhagwati Prasad Bhatnagar as his mistress or as wife, as it would be clear from the Ex.A 1 - a joint photograph of the said two persons Shri Bhagwati Prasad Bhatnagar and Mst. Jankunwar Bai which is supported by papers relating to the pension of said Shri Bhagwati Prasad Bhatnagar vide Ex.3, pension payment order of Treasury Officer, Ratlam, in which the name of Mst. Jankunwar Bai is shown as wife of Shri Bhagwati Prasad Bhatnagar. A joint photograph is also affixed on the said document. This, in the context of certificate of Devsthan department, Ex-A 7 that defendant Mst. Raj Kunwar was being paid Rs.36.70 by Tehsildar, Pidawa as 'Punyarth Batota' for working in the said temple read with gift deed - Ex.A 2 in favour of father of defendants, Shri Bhawani Shankar in respect to the eastern part of the suit house, shows

that during her life time, in the remaining portion of the suit house, Mst. Dhan Kunwar herself lived but much before her death in the year 1953, in the year 1943 itself plaintiff Mst. Jankunwar Bai had left her and had started living with PW 1 - Shri Bhagwati Prasad Bhatnagar as his mistress / wife. In the light of this, the statement of witness DW-2 Bhawani Shankar that Mst. Dhan Kunwar Bai had cancelled adoption of Mst. Jankunwar Bai during her life time by publication of a public notice in the gazette published by Holkar State (in the State of Madhya Pradesh and later on the said town was included in the Jhalawar district of Rajasthan), appears to be more reliable though such gazette notification could not be produced before the learned trial court. In view of this, the findings of the learned trial court while deciding the issues No. 1 and 6 that the adoption deed once made in favour of plaintiff Mst. Jankunwar Bai could not be revoked, cannot be sustained.

10. It further appears to this court that the fact relating to plaintiff Mst. Jankunwar Bai leaving Mst. Dhan Kunwar Bai in the year 1943 itself and living with PW-1 Shri Bhagwati Prasad Bhatnagar is an established fact and in view of this, her any semblance of right as legal heir of Mst. Dhan Kunwar Bai stood revoked and severed in the year 1943. As against this, the claim of the defendants that the said house itself was given

in gift to father of defendants, Shri Bhawani Shankar under gift deed Ex.A -2 dated 9.12.1938 by Mst. Dhan Kunwar Bai with a right to live in some portion of the said house during her life time, appears to be more convincing and soon after the death of Mst. Dhan Kunwar Bai, the defendants became entitled to the full ownership and possession of the suit house and therefore the version or claim of the plaintiff that the said suit house was given in temporary possession of the defendants for marriage of daughter of defendant Kanhaiya Lal and later on the defendants refused to give back the possession to the plaintiff, does not appear to be tenable, as the plaintiff was, in fact, not even living in the said house ever since 1943 when she started living with PW-1 Shri Bhagwati Prasad Bhagnagar as his mistress / wife.

11. In view of this, the findings of the learned trial court in favour of the plaintiff, cannot be sustained and the impugned judgment and decree deserve to be set aside. The same are accordingly hereby set aside.

12. The present appeal is accordingly allowed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Chauhan/